These are the tentative rulings for civil law and motion matters set for Thursday, July 26, 2012, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 25, 2012. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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1. **M-CV-0050688 Rockholm, Dorothy vs. Butler, Lisa**

The Motion to Compel Form Interrogatories and Motion to Compel Production of Documents are dropped at the request of the moving party.

2. **M-CV-0053764 Kaiser Foundation Health Plan vs. Wood, Brittany**

The unopposed Petition to Confirm Arbitration Award is granted. If oral argument is requested, petitioner's request for telephonic appearance is granted. The court will contact counsel at the time the matter is called for hearing.

3. **M-CV-0054780 U.S. Bank, N.A. vs. Kobra Properties, et al**

Plaintiff's Motion to Strike is continued, on the court's own motion, to August 16, 2012 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

4. **S-CV-0026246 Eshpari, Mohammad, et al. vs. Meritage Homes of No. Ca**

The unopposed request of defendant and cross-complainant Meritage Homes ("Meritage") for judicial notice is granted. The court takes judicial notice of the four items identified in the request but not the truth of any matters contained therein.

Simas Floor Company's objections to evidence are sustained.

Colafrancesco Framing's and RCI Electric's objections to evidence are sustained.

Sacramento Building Products' objections 3, 4 and 6 are sustained. Objections 1, 2 and 5 are overruled.

Beutler Corporation's evidentiary objections are sustained.

The objections to evidence submitted by cross-defendants Genesis Tile Corporation, Easy Lift Door Company and Vaca Valley Roofing are ruled upon as follows:

(1) The objections to lines 3-4 of paragraph 14 of the Barry Grant declaration and lines 15-16 of paragraph 17 of the Barry Grant declaration are sustained;

(2) Objections 2 and 3 to the Mark Chapman declaration and objection 1 to the James Bothwell declaration are sustained.

(3) The remaining objections are overruled.

Meritage's request that the court disregard the opposition filed by Creative Window Concepts as untimely is denied. Hearing on the motion was continued to allow Meritage to file a reply to the opposition. The reply which Meritage filed addresses the merits of the opposition and does not (and cannot) claim any prejudice as a consequence of any late filing. (See *Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 30-31.)

The motion of defendant and cross-complainant Meritage for summary adjudication of the issue of duty put at issue by the ninth cause of action of the Meritage cross-complaint is denied.

"[A] party may move for summary adjudication as to…one or more issues of duty…if that party contends that…one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (CCP 437c(f)(1).) A party seeking summary adjudication bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party has the burden of showing, by competent evidence, facts establishing every element necessary to sustain a judgment in favor of the party. (*Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468.) Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to establish the existence of material facts. (CCP§437c(p)(1).) "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (CCP 437c(f)(1).)

Meritage seeks summary adjudication of the duty issue presented by its ninth cause of action, i.e., a declaration that the express indemnity provisions of the written subcontract agreements which Meritage has with nine of its cross-defendant subcontractors requires the subcontractors to defend Meritage in this action. A typical provision provides that "subcontractor shall defend, indemnify and hold Contractor…harmless from and against any and all loss, expense, liens, claims, demands, and causes of action of every kind and character…for death, personal injury, damage to property of subcontractor and third party fines or penalties, including costs, attorney' fees and settlements arising out of or in any way connected with or alleged to be arising out of or in any way connected with the performance of work under this agreement, by act or omission, whether performed by subcontractor or any other subcontractor or any independent contractor…whether resulting from or contributed to by (a) the negligence in any form…except the sole negligence or willful misconduct of Contractor or Owner,…or (b) any defect in, or condition of the premises on which the work is to be performed or any equipment thereon or any materials furnished by Contractor. Subcontractor shall be solely responsible for loss to or damage of all materials, equipment and work hereunder

until the contract is completed to Contractor's and owner's satisfaction…Subcontractor does expressly assume, to the extent of the work covered by this subcontract, all of the indemnification provisions and guarantees imposed on the Contractor by the construction contract between Contractor and owner, if any."

The agreement further provides that the duty to defend "is contingent only upon the tender by [Meritage] of a claim which wholly or partially comes within the ambit of the above, and [subcontractors] shall pay promptly when due and as incurred all attorney's fees and costs generated in the defense of [Meritage] as to the entire action and including bonds and the costs of appeal…." Meritage argues the defects alleged by plaintiffs arise from the cross-defendants' work, that it tendered plaintiffs' claim to the cross-defendants but that cross-defendants have not undertaken their duties to defend.

The motion is denied on procedural and substantive grounds. The motion is procedurally defective in several significant respects. The Meritage exhibits are contained in two large, separately bound volumes. California Rules of court, rule 3.1350(d), requires that "Citation [in the separate statement] to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers [of that exhibit]." Meritage's separate statement runs afoul of this rule by failing to reference the page and line numbers of the exhibits to which it refers. This failure is made more troublesome by Meritage's further failure to comply with rules 3.1110(c) and (f). Those rules, respectively, require that documents bound together must be consecutively paginated and that each exhibit must be separated by a hard 8 1/2 x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation.

Proceeding in derogation of these rules makes it extremely difficult for the court to locate, not only the exhibits to which the separate statement refers, but also the precise portions of the exhibits upon which Meritage relies. The problem is further exacerbated in this case because Meritage seeks summary adjudication against nine different subcontractors on the basis of nine separate and sometimes variant subcontract agreements. The court is empowered to and hereby does deny the motion on this basis alone. (See Code Civ. Proc., § 437c(b)(1); *Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 74 ["A busy trial court's task is made extremely difficult if a party…fails to comply with the requirements of rule [3.1350]…[and] has every right to refuse to proceed with a summary judgment motion in the absence of an adequate separate statement…." (citations omitted)]; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 523.)

However, even if the motion is considered on its merits, the same result would be obtained. Meritage fails to carry its initial burden with respect to its motion against cross-defendant Simas Floor Company, Inc., because it directs the argument portion of its motion to an agreement other than the one into which the parties allegedly entered. (Meritage's undisputed material fact 9 and Simas Floor Company, Inc.'s, response thereto.) Meritage acknowledges as much in its reply papers: "[T]he indemnity language referenced in [the] motion for summary adjudication is not identical to the indemnity language in Simas Floor's subcontract agreement." (Reply, p. 3.) However, it tries to correct the problem by arguing "it is undisputed that Simas agreed to defend and indemnify Meritage for any and all claims concerning Simas Floor's scope of work."

(*Ibid*.) Meritage misses the point. Meritage had the burden of showing, initially, by competent evidence and pertinent argument, facts and law establishing every element necessary to sustain a judgment in its favor. (*Consumer Cause, Inc. v. Smilecare, supra,* 91 Cal.App.4th 454, 468.) Basic due process considerations preclude it from making that showing after the opposition has been filed.

Meritage also fails to carry its burden to show, by competent evidence, that the claims upon which the amended complaint is based trigger duties to defend under the parties' respective subcontracts. Meritage relies upon the allegations of the amended complaint, the work obligations imposed by the various subcontracts, a document which plaintiffs prepared entitled Preliminary Cost of Repair" (Meritage includes only a portion of that document with its motion) and the declaration of Mark Chapman to establish those defense obligations. (Meritage's SSUMF 15-et seq.) The amended complaint alleges plaintiffs sustained damage to component parts of plaintiffs' homes and grounds, e.g., to floors, doors, windows, tiles and chimneys. The "Preliminary Cost of Repair" document identifies particular defects and damages suffered by the respective plaintiffs. Mr. Chapman states he reviewed the amended complaint's allegations, the "Preliminary Cost of Repair" document and the various subcontracts and can connect particular property defects to the work of particular subcontractors. He opines "that at least one defect alleged by Plaintiffs arises directly out of work performed by each of the foregoing subcontractors…." (Chapman decl. at 7:3-4.)

However, in opposition, cross-defendants show that plaintiffs prepared the Preliminary Cost of Repair for mediation and settlement purposes. (See, e.g., Simas Floor Company's UMF 16-17, 19-29, and evidentiary objections to the Preliminary Cost of Repair and declaration of Mark Chapman.) Documents prepared for mediation purposes are generally protected by the mediation privilege (Evid. Code §§ 1115, 1119) unless "The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118 to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation." (Evid. Code § 1122(a)(2).)

In reply, Meritage argues that the Preliminary Cost of Repair was prepared pursuant to a stipulation between plaintiffs and Meritage that was executed shortly after plaintiffs commenced the litigation. Meritage argues the document was to have been a "non-protected statement of claim" but that plaintiffs nevertheless "affixed a label to the document that stated "Mediation Purposes Only – Protected from Disclosure by Evidence Code sections 1152 and 1116-1119 et seq." (Meritage reply to Simas' opposition at 6:26-7:6. See also Meritage's moving SSUMF 17 and exhibit "O.") Meritage argues that, because plaintiffs and Meritage intended and stipulated that the document would be a "non-protected statement of claim," it falls within the Evidence Code 1122(a)(2) exception to disclosure and is admissible, notwithstanding the "Mediation Purposes Only" label which plaintiffs placed at the bottom of each page of the subsequently prepared document.

However, in ruling on a motion for summary judgment or summary adjudication, the court is required to consider all of the evidence and all of the inferences reasonably drawn therefrom, and it must view such evidence in the light most favorable to the

opposing party. (*Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th 826, 843.) The statement on each page of the Preliminary Cost of Repair document (i.e., that the document is to be used for mediation purposes only and is protected from disclosure by Evidence Code sections 1152 and 1116-1119 et seq.) creates a factual question (whether the document is privileged) that cannot be resolved on this motion for summary adjudication. Indeed, even if Meritage had offered new evidence in reply that the statement does not mean what it says, the triable issue would remain. Any such new reply evidence would not be proper in any event. (See *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316.)

5. S-CV-0026313 Harmon, Martin vs. JPH Management, Inc., et al

Plaintiff's Motion to Charge Interest is granted. There has been an insufficient showing to stay enforcement pursuant to CCP§918.15. There has also been an insufficient showing that the charging order would unduly harm the ongoing business activity of the LLC.

If oral argument is requested, defendants' request for telephonic appearance is granted. The court will contact counsel at the time the matter is called for hearing.

6. S-CV-0026786 Reserves at the Galleria Owners Assoc. vs. Galleria Condo

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be held at 8:30 a.m. in Department 42:

J. Michael McGuire's Motion to be Relieved as Counsel for Atmos Corporation is granted and he shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon Atmos Corporation.

7. S-CV-0026964 Carter, Sandra, et al vs. Lincoln Manor, Inc., et al

Defendants' unopposed Motion for Summary Judgment, or in the Alternative Summary Adjudication, is granted. A defendant moving for summary adjudication bears the burden of persuasion to show that one or more elements of the cause of action cannot be established, or there is a complete defense to the cause of action. (Code Civ. Proc. § 437c(a), (o)(1), (2), (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

Plaintiff Herre's first, second, third, and fourth causes of action are barred by the doctrine of unclean hands. (*Camp v. Jeffer, Mangels, Butler & Mamaro* (1995) 35 Cal.App.4th 620, 638.) Misrepresentations regarding felony convictions have been held to relate directly to wrongful termination claims. (*Ibid*.) Plaintiff Herre filled out her employment application, stating she had never been convicted of a crime other than a minor traffic violation. (SSUMF No. 2.) However, Herre was convicted of felony burglary in 1983 and was incarcerated for 13 months. (Id. at No. 3.) Defendants had a company policy in place that prohibited the hiring of convicted felons and that any employee would be fired upon knowledge that such an employee was convicted of a felony. (Id. at Nos. 4 through 7.) Plaintiff Herre knew of this policy. (Id. at No. 8.) Thus, there is no triable issue of material fact as to any of the four causes of action based upon the doctrine of unclean hands.

Further, there is no triable issue of material fact as to the first or second causes of action for sexual harassment and failure to prevent sexual harassment. In order to prove sexual harassment, a plaintiff must belong to a protected class, be subject to unwelcome sexual harassment, the harassment was based upon sex, the harassment was sufficiently pervasive to alter the conditions of employment and create an abusive working environment, and respondeat superior. (*Kelley v. Conco Companies* (2011) 196 Cal.App.4th 191, 202.) A prima facie showing for failure to prevent harassment is made where the plaintiff is subject to discrimination, retaliation, or harassment; the defendant failed to take all reasonable steps to prevent such acts, and this failure caused plaintiff to suffer injury, damages, loss or harm. (*Leiland v. City and County of San Francisco* (2008) 576 F.Supp.2d 1079, 1103.) The only events that were objectionable to Plaintiff Herre were Copeland's repeating vulgar language told to her by patients, overhearing vulgar conversations between Copeland and her girlfriend, and Copeland sticking her hand down the back of her pants. (SSUMF No. 9.) This is insufficient to show either sexual harassment or failure to prevent sexual harassment. Since plaintiff Herre presents no further evidence before the court, there exists no triable issue of material fact as to the first and second causes of action.

The third and fourth causes of action are also barred under the after-acquired-evidence doctrine. The doctrine acts as a complete or partial defense to a wrongful discharge action where the information of the employee's wrongdoing would have resulted in the employee's discharge in any event. (*Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 842.) The doctrine is invoked by establishing that the wrongdoing was of such severity that the employee would have been terminated on those grounds alone if the employer had known and the firing would have been a matter of "settled" company policy. (*Id*. at pp. 845-846.) Plaintiff Herre's employment application was signed on January 30, 2008 where Herre stated that she had never been convicted of a crime other than a minor traffic offense. (SSUMF No. 2.) It was defendants' policy to terminate employment immediately if it was discovered that an employee had been convicted of a criminal offense. (Id. at Nos. 5 through 7.) Plaintiff Herre knew of this company policy and knew that she would be terminated immediately if such an offense was discovered. (Id. at Nos. 4, 8.) Plaintiff Herre was in fact convicted of a felony in 1983 and was incarcerated for 13 months. (Id. at No. 3.) Thus, the doctrine of after-acquired-evidence applies in this case and there exists no triable issue of material fact as to the third and fourth causes of action.

Finally, Plaintiff Herre fails to raise a triable question of material fact with respect to any claims asserted against defendant Horizon West Healthcare, Inc. ("Horizon"). Herre fails to set forth evidence showing that the operations of Horizon and defendant Lincoln Manor, Inc. were so interrelated that Horizon exercised greater than normal control over Lincoln Manor, Inc., or that the two companies shared common management. Summary judgment is appropriate as to Herre's claims against Horizon.

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8. S-CV-0029018 Taylor, Ernest, et al vs. Moss, Cathy, et al

Defendants' Motions to Compel Further Responses to Form Interrogatories, Requests for Admissions, and Requests for Production of Documents as to all plaintiffs is denied. The defendants fail to comply with CRC Rule 3.1345(a) as there are no separate statements filed in support of any of the five motions submitted to the court.

9. S-CV-0029501 Campbell, Larry vs. Bank of America

Plaintiff's Motion to Set Aside Default is denied. Plaintiff provides no legal authority to support the application of CCP§473(b) to a denial of a motion for reconsideration. Even if the court were to consider the application of CCP§473(b) to such a motion, plaintiff has failed to sufficiently show mistake, inadvertence, surprise, or excusable neglect.

10. S-CV-0029580 Odin, Linda vs. Sutter Roseville Medical Center, et al.

Defendant's unopposed Motion for Leave to File a First Amended Answer is granted. The court has broad discretion in granting leave to amend a pleading and such discretion is usually exercised liberally to permit amendment to the pleading. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428.) The motion has been brought in a timely fashion and there is no showing of prejudice.

Any amended answer shall be filed on or before August 17, 2012.

11. S-CV-0029846 Quentmeyer, Matt vs. Modlin, Delbert Joe, et al

Plaintiff's unopposed Motion to Continue Trial and Discovery Dates is granted. The current trial date of September 4, 2012 and related MSC and CTC dates are vacated. The matter is set for a CMC on August 14, 2012 at 10:00 a.m. in Department 40 for the setting of trial dates. The discovery cut-off dates are continued to follow the new trial dates.

Plaintiff's Motion for Leave to Amend Complaint is granted. The court has broad discretion in granting leave to amend a pleading and such discretion is usually exercised liberally to permit amendment to the pleading. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428.) The current request was brought in a timely fashion and will not prejudice the defendants. Any amended complaint shall be filed and served on or before August 17, 2012.

Plaintiff's Motion to Compel Discovery is granted. A corporation that is dissolved continues to exist for the purposes of prosecuting and defending actions by or against it. (Corp C§2010(a).) No action or proceeding to which a corporation is a party abates by the dissolution of the corporation. (Corp C§2010(b).) Further, the statutory scheme discloses a legislative intent that allows parties to bring suits against dissolved corporations discovered even after dissolution. (*Penasquitos, Inc. v. Superior Court* (1991) 53 Cal.3d 1180, 1183.) Defendant shall provided verified responses and responsive documents, without objections, on or before August 3, 2012.

12. S-CV-0030230 Northern California Coll. Serv. vs. Chawi, Johnny E., et al

Plaintiff's unopposed Motions to Compel Form Interrogatories, Set Two and Demand for Documents, Set Two as to Defendant Salma Chawi are granted. Defendant shall provided verified responses and responsive documents, without objections, on or before August 17, 2012.

Plaintiff's unopposed Motions to have Requests for Admissions, Set Two Deemed Admitted and Requests for Admissions, Set Four Deemed Admitted are granted as to Defendant Salma Chawi. The matters encompassed in plaintiff's requests for admissions, sets two and four are deemed admitted. Sanctions in the amount of $1,080.00 are imposed upon Defendant Salma Chawi pursuant CCP§§2023.010 and 2033.280.

Plaintiff's unopposed Motions to Compel Form Interrogatories, Set One and Demand for Documents, Set One as to Defendant Johnny Chawi are granted. Defendant shall provided verified responses and responsive documents, without objections, on or before August 17, 2012.

Plaintiff's unopposed Motions to have Requests for Admissions, Set One Deemed Admitted and Requests for Admissions, Set Three Deemed Admitted are granted as to Defendant Johnny Chawi. The matters encompassed in plaintiff's requests for admissions, sets one and three are deemed admitted. Sanctions in the amount of $1,080.00 are imposed upon Defendant Johnny Chawi pursuant CCP§§2023.010 and 2033.280.

13. S-CV-0030341 Miller, Herbert E. vs. JP Morgan Chase Bank, N.A., et al

The Demurrer is dropped at the request of the moving party.

14. S-CV-0030419 Lewis, David vs. Ludwig, Michael

Appearance required. Respondent's Motion to Vacate Judgment and Set New Hearing Date is denied. The motion paperwork was not noticed or filed in accordance with CCP§§527.6,1005.

15. S-CV-0030536 Walker, Rickie Lynn vs. Citibank N.A. et.al.

The Defendants' Demurrer to the First Amended Complaint (FAC) is sustained without leave to amend. Plaintiff's FAC asserts four causes of action arising out of a foreclosure. The moving defendants demur to all causes of action. A party may file a demurrer to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) All properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc*. (2011) 192 Cal.App.4th 1149, 1153.)

As to the first cause of action, the plaintiff fails to allege tender or the ability to tender, which is required in any quiet title action. (*Shimpones v. Stickney* (1934) 219 Cal. 637, 649 ["It is settled in California that a mortgagor cannot quiet his title against the mortgagee without paying the debt secured."]; *Miller v. Provost* (1994) 26 Cal.App.4th 1703, 1707.) While tender is not required where it would be inequitable, the FAC fails to sufficiently allege tender or the inequity that would eliminate the need to tender. (*Onofrio v. Rice, et al*. (1997) 55 Cal.App.4th 413, 424.) Furthermore, the FAC alleges that the defendants lack the authority to proceed with the foreclosure sale. Plaintiff lacks standing to bring such a pre-emptive suit seeking a presale determination regarding the defendants' ability to initiate the foreclosure. (*Gomes v. Countrywide Home Loans, Inc*. (2011) 192 Cal.App.4th 1149, 1154; *Robinson v. Countrywide Home Loans, Inc*. (2011) 199 Cal.App.4th 42.)

As to the second cause of action for fraud and violation of the False Claims Act, the FAC fails to allege facts with sufficient specificity and does not allege sufficient specificity as to the corporate defendants. (*Citizens of Humanity, LLC v. Costco Wholesale Corp*. (2009) 171 Cal.App.4th 1, 20.) Nor does the FAC allege specific facts as to plaintiff's reliance upon the alleged misrepresentations or the harm plaintiff suffered. (*Perlas v. GMAC Mortg., LLC* (2010) 187 Cal.App.4th 429, 434.)

As to the third cause of action, the FAC fails to allege sufficient facts showing unfair, unlawful, or fraudulent conduct on the part of the moving defendants to establish an action under the UCL. (*Puentes v. Wells Fargo Home Mortg., Inc*. (2008) 160 Cal.App.4th 638, 643-644.)

As to the fourth cause of action for declaratory relief, the FAC fails to sufficiently allege an actual controversy between the parties. (CCP§1060; *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746-747.) Further, the declaratory relief action relies upon the other three causes of action that also fail. (*Ratcliff Architects v. Vanir Construction Management, Inc*. (2001) 88 Cal.App.4th 595, 607.)

The court presumes the facts in the FAC and the moving papers state the strongest case for the plaintiff. (see *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1286.) Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) A demurrer will be sustained without leave to amend absent a showing by plaintiff that a reasonable probability exists that the defects can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The FAC does not suggest on its face that it is somehow capable of amendment as to any of the causes of action and plaintiff fails to make a sufficient showing that the FAC can be amended to change its legal effect. Thus, the demurrer is sustained without leave to amend.

If oral argument is requested, defendants' request for telephonic appearance is granted. The court will contact counsel at the time the matter is called for hearing.

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16. S-CV-0030548 McNutt, Lawrence, et al vs. Mackenroth, Noah D., et al

Defendants' Demurrer is continued, on the court's own motion, to August 16, 2012 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

17. S-CV-0031160 Dean, Gary M., et al vs. Tower Insurance Co., et al

Plaintiffs' Motion to Consolidate is continued to August 9, 2012 at 8:30 a.m. in Department 40. Time is shortened and plaintiffs shall comply with CRC Rule 3.350(a)(1)(C) and file and served the current motion in White v. Boddorf, SCV-30001 on or before July 27, 2012. Plaintiffs shall also re-notice all parties in the current action of the new court hearing date.

18. S-CV-0031268 Tri Counties Bank vs. Boggs, Charles R., et al.

Appearance is required on July 27, 2012 at 2:00 p.m. in Department 40 for continued proceedings on defendants' Motion for Preliminary Injunction.

Plaintiff's Motion for Appointment of Receiver is denied. A receivership is a time-consuming, expensive and potentially unjust remedy and therefore only available where absolutely essential because no other remedy will do the job. *City & County of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745. Since a receivership is an equitable remedy, the equitable considerations in an injunction proceeding apply—i.e., there must be a showing of irreparable injury and inadequacy of other remedies. *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1953) 116 Cal.App.2d 869, 872.

Trust deed provisions authorizing appointment of an assignment-of-rents receiver may create a rebuttable prima facie showing of entitlement to the appointment of a receiver. *Barclays Bank of Cal. v. Superior Court* (1977) 69 Cal.App.3d 593, 602. However, the appointment is still discretionary and the court may properly decline to appoint a receiver where there are strong countervailing equities. *Id.* In this case, plaintiff does not contend that waste is being committed on the property, and defendants indicate their intention to harvest hay for potentially profitable sales. Defendants' ability to continue operations may ultimately benefit plaintiff if defendants' default can be cured through profits derived from defendants' business operations. Plaintiff also has alternative remedies available, including non-judicial foreclosure, which plaintiff is pursuing contemporaneously. Appointment of a receiver would potentially disrupt the harvesting operations, and certainly diminish the rents and profits derived therefrom, given the added cost of the receiver's fees. Finally, plaintiff fails to establish irreparable injury and inadequacy of other remedies.

Plaintiff's Motion for Order of Reference is granted. A pre-dispute agreement for appointment of a referee is enforceable if it is part of a written contract, and the existence of such an agreement is determined under the usual rules of contractual interpretation. *Sy First Family Ltd. Partnership v. Cheung* (1999) 70 Cal.App.4th 1334, 1341. Defendants argue that the reference provisions contained in the deeds of trust and security agreements that they have executed are unconscionable. However, defendants fail to submit any admissible evidence suggesting that the agreements were provided to them on a take-it-or-leave-it basis, that the reference terms are contrary to their reasonable

expectations, or that an undue financial burden will be placed on defendants by order of reference.

Plaintiff has submitted two potential referees for consideration. The reference provisions of the subject documents do not permit plaintiff to unilaterally appoint a referee, nor is plaintiff attempting to do so. Defendants may submit to the court no more than two proposed referees by no later than August 3, 2012. Plaintiff and defendants may submit objections to the proposed referees by no later than August 8, 2012. If the parties do not agree on a referee, the court will appoint a referee from among the proposals submitted by the parties.

These are the tentative rulings for civil law and motion matters set for Thursday, July 26, 2012, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 25, 2012. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.